

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC 20591

Served: April 11, 1991

FAA Order No. 91-10

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In the Matter of: )  
CRAIG ALVIN GRAHAM )  
\_\_\_\_\_ )

Docket No. CP90NM0146

ORDER TO SHOW CAUSE WHY THIS APPEAL  
SHOULD NOT BE DISMISSED

Respondent filed a document dated February 5, 1991, which appears to have been intended as a Notice of Appeal from an oral initial decision rendered by Administrative Law Judge Henry B. Lasky on January 14, 1991. This "Notice of Appeal" was late-filed, and Respondent has failed to perfect this appeal. However, rather than dismiss this matter summarily, I have decided to give Respondent an opportunity to show cause why it should not be dismissed.

The pertinent history of this case can be summarized as follows. Complainant filed the Complaint in this action on March 2, 1990, alleging that Respondent had violated Section 901(d) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. § 1471(d), and 14 C.F.R. § 107.21(a)(1), by attempting to board an aircraft with a

concealed deadly or dangerous weapon (a loaded .25-caliber, semi-automatic Browning Arms pistol, containing five live rounds of ammunition) in his accessible baggage. The pistol was discovered during the inspection conducted at the security screening checkpoint. On April 4, 1990, Respondent filed a letter in which he explained that he did not dispute the factual allegations contained in the Complaint, but that he wished to challenge the proposed penalty of \$2,500. By order dated April 6, 1990, the law judge determined that Respondent's letter would be deemed an admission of the allegations in the Complaint and limited the trial to the issue of sanction. On October 2, 1990, the law judge issued a Notice of Hearing, scheduling a hearing to be conducted in this matter on January 14, 1991 in Lawndale, California. When Respondent failed to appear at the hearing on January 14, 1991, the law judge issued an oral initial decision granting Complainant's Motion for Decision and thereby, affirming the Complaint in its entirety. On January 24, 1991, the law judge served a Notice of Initial Decision, in which he explained that he had granted Complainant's Motion for Decision on January 14, 1990.

In the document filed on February 5, 1991, Respondent alleges that he did not appear at the hearing because he never received any notice of the hearing date (although he acknowledges that he did receive the Notice of Initial

Decision and the Order Assessing Civil Penalty, both mailed to the same address as the Notice of Hearing). In this latest filing, Respondent again explains that he does not dispute the factual findings of the law judge, but as previously indicated, he seeks a reduction of the \$2,500 civil penalty.

Pursuant to Section 13.233 of the Rules of Practice in Civil Penalty Actions, a party shall file a notice of appeal not later than 10 days after entry of an oral initial decision on the record (or service of the written initial decision on the parties)<sup>1/</sup> and shall serve a copy of the notice of appeal on each party. [55 Fed. Reg. 27548, 27584 (July 3, 1990) (to be codified at 14 C.F.R. § 13.233(a))]. In addition, assuming a timely notice of appeal, a party must perfect the appeal by filing an appeal brief with the Administrator not later than 50 days after entry of the oral initial decision on the record (or service of the written initial decision on the parties). [55 Fed. Reg. 27548, 27584 (July 3, 1990) (to be codified at 14 C.F.R. § 13.233(c))].

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<sup>1/</sup> Since in this case the law judge's decision was issued orally, no written decision was issued.

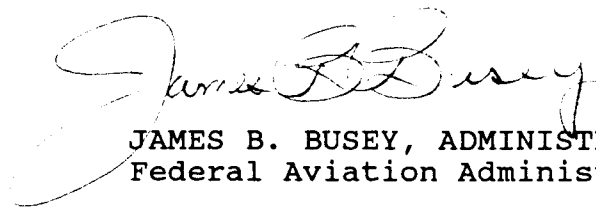
Respondent did not file a notice of appeal within 10 days after the entry of the law judge's oral initial decision. In addition, he did not file a separate appeal brief within 50 days of the oral initial decision. Moreover, I have no evidence that Respondent ever served a copy of his February 5, 1991, filing on the Complainant.

As a result of the foregoing, it is ordered that Respondent file a response to this Order within 14 days, explaining in detail any reasons why this matter should not be dismissed.

Respondent should file this response with the Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC 20591, Attention: Appellate Docket Clerk. Respondent must also serve a copy of this response on counsel for Complainant, and Complainant must file its response, if any, within 14 days of service of Respondent's response to this Order.

The parties should be mindful that the only issues before me at this time are the following: 1) whether good cause exists to excuse the late-filing of Respondent's notice of appeal and 2) if so, whether good cause exists to excuse Respondent's failure to perfect the appeal by filing a separate appeal brief in a timely fashion. See In the Matter of Hart, Order No. 90-39 (November 7, 1990); Administrator v. Metz, FAA Order No. 90-0003 at 5 (January 29, 1990).

If Respondent fails to file a response within 14 days,  
this appeal will be dismissed and the Order Assessing Civil  
Penalty will continue in effect.



JAMES B. BUSEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 10<sup>th</sup> day of April, 1991.